

V.

Discovery Requests

17. With enthusiasm unbounded by facts or reason, Mrs. Scantland has requested the designation of nine additional issues, one of which is in three parts, petition at 22-24. In its initial discovery request, petition at Exhibit KK, based on the premise that all nine issues will be granted, and with enthusiasm also unbounded by facts or reason, Mrs. Scantland starts off the document production request for copies of all logs of all six stations formerly owned by M.M. Group, Inc. for all of the years when Mr. Casagrande had an interest in those stations, clearly an inappropriate request since allegations that might involve any logs were never made against all six stations. This broad, generic style documentation request continues throughout the initial discovery request following which Mrs. Scantland wants the right to inspect each of the six stations. For depositions, Mrs. Scantland requests Messrs. Casagrande and Litton (for which we would interpose no objection if any issue were added and if the scope of the questioning were properly limited to whatever issue is added), the receiver of three stations and all chief operators at all stations.

18. The Commission's rule calling for discovery requests at the time of the filing of petitions to enlarge issues, 47 C.F.R. §1.229(e), contemplates something more defined and more responsible than this on the part of the petitioning party. Except for the depositions of Messrs. Casagrande and Litton as stated above, (a) we categorically object to all of the initial

discovery requests as unduly broad and not focused on the requested issues, and (b) we request this Court, should it determine to add any issue, to direct the petitioner (within a designated brief period of time) to modify the initial discovery request to address whatever issue has been added and to direct Mr. Casagrande to respond to such modified discovery request (also within a designated brief period of time).

Respectfully submitted,

L. A. Casagrande

EXHIBIT 1

JUL- 6-93 TUE 15:08
HOLIDAY INN NLR
JUL 6 09 10E 19:01

WWHT/WTLT
ID:501-758-2094
WWHT/WTLT

FAX NO. 6148467385
JUL 06 '93
FHA NO. 01/15/19/380

P.02
12:34 No.006 P.02
P.02

07/06/93 09:08

0202 833 3084

SECRET & COLE

0003

DECLARATION

I, Robert G. Casagrande, declare under penalty of perjury that the following statements are true and correct to my best knowledge and belief:

1. I have read the OPPOSITION TO PETITION TO ENLARGE ISSUES that is being filed with the FCC on this date.

2. Factual statements regarding me are accurate.

3. Factual statements in the following portions of that document are accurate: ¶4(a), ¶4(b), ¶4(c), ¶4(d), ¶4(e), ¶4(f), ¶4(g) and ¶4(h).


Signature

July 6, 1993

EXHIBIT 2

DECLARATION

I, Mark S. Litton, declare under penalty of perjury that the following statements are true and correct to my best knowledge and belief:

1. I have read the OPPOSITION TO PETITION TO ENLARGE ISSUES that is being filed with the FCC on this date.

2. Factual statements regarding me are accurate.

3. Factual statements in the following portions of that document are accurate: ¶7(a), ¶7(b), ¶7(c), ¶7(d), ¶7(f), ¶7(g), ¶7(h), ¶7(i).

Mark S. Litton

Signature

July 6, 1993

EXHIBIT 3

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LARRY D. SUMMERVILLE
BROADCAST ANALYST

ANDREW G. HALEY
(1904-1998)

June 6, 1991

Fidelity Bank, National Association
Broad and Walnut Streets
Philadelphia, PA 19109

Ladies and Gentlemen:

Haley, Bader & Potts has served as special communications counsel to M.M. Group, Inc., an Ohio corporation ("MM"), Riggs-Hutchinson & Associates, Inc., an Ohio corporation ("RH") (collectively the "Borrower"), and Mark S. Litton and Robert G. Casagrande in connection with their interests in RH, and as applicable, concerning communications matters relative to the Federal Communications Commission ("FCC") in connection with:

(a) An application (FCC Form 315), as amended, filed May 18, 1990, for consent to the transfer of control of Riggs-Hutchinson & Associates, Inc., licensee of Radio Station WNRJ(FM), Marysville, Ohio (File No. BTCH-900518HK), from Richard H. Riggs ("Riggs") and Charles H. Hutchinson ("Hutchinson") to Litton and Case (hereafter the "Marysville Application") pursuant to that certain Option Agreement, dated August 8, 1989, by and between Riggs, Hutchinson, Litton and Case (the "Marysville Option Agreement").

(b) A March 12, 1991, request to the FCC for Special Temporary Authority ("STA") to operate WCFL(FM), Morris, Illinois, at variance from the terms of its modified construction permit, and the April 26, 1991, request for extension of such authority.

In rendering this opinion we have assumed the genuineness of signatures on documents and the conformity to the originals of all copies examined by or submitted to us of

Fidelity Bank, National Association
June 5, 1991
Page 2

photocopies or conformed copies. As to various questions of fact in connection with this opinion, we have relied upon actual examination of available files in our office, those of the FCC and pertinent statements and representations of responsible representatives of the Borrower and of the FCC. We have examined such records, certificates and other documents and have considered such questions of law as relate to the Borrower as we have deemed necessary or appropriate for the purposes of this opinion.

Except as otherwise specifically stated herein, this opinion is limited to matters arising under the Communications Act of 1934, as amended (the "Communications Act"), and the rules, regulations, orders, policies and procedures of the FCC (the "Broadcast Regulations"), all as applicable to the Borrower and the Stations (as defined in the Restated Loan Agreement between MM, RH and Fidelity Bank, National

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2. By Letter of May 21, 1991, the FM Branch of the FCC provided notice to MM of the grant of an extension of the March 28, 1991, STA to operate at variance from the terms of the modified construction permit for the operation of WCFL(FM), Morris, Illinois. That STA expires by its terms on July 26, 1991. In the event that MM has not yet received and installed the new antenna and conducted the field measurements necessary to enable MM to file an application for license to cover the construction permit (FCC Form 302) by that date, it will be necessary to request a further extension of the STA.

3. Based upon the Broadcast Regulations and upon diligent inquiry, no approval of the FCC was required with respect to the corporate merger of Clear River Communications, Inc. ("Clear River") into MM because, following the consummation of the Assignment of License from WQTL(FM), Ottawa, Ohio from Clear River to MM on December 1, 1989, Clear River ceased to be a Commission licensee and no transfer of control or alteration of the ownership structure of MM requiring FCC approval occurred as a result of the merger.

4. Upon review of the Amended and Restated Loan Agreement, the Second Amendment to General Security Agreement and the Amended, Restated and Consolidated Stock Pledge Agreement, dated even date herewith, execution and delivery and performance by the Borrowers of their obligations arising on the face of any of the forgoing documents, individually, and not necessarily in pari materia, will not violate or conflict with the Broadcast Regulations. The Borrower will be required by FCC regulation to file with the FCC after closing copies of the Restated Loan Agreement and various of the Security Documents.

5. Attachment A hereto lists each license issued by the FCC and held by one or more of the Borrowers (the "FCC Licenses"). Each of the FCC Licenses is duly and validly held by the entity identified in Attachment A as holding such license, and each of the FCC Licenses listed in Attachment A is in full force and effect. Upon diligent inquiry, there are no other licenses, permits or other authorizations of the FCC required for the lawful conduct of the business of Borrowers other than the FCC Licenses.

Our opinions herein contained are subject to the following qualifications:

Fidelity Bank, National Association
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(i) Under the Broadcast Regulations, FCC approval will be required prior to the transfer of control or assignment of any of the FCC Licenses, or the exercise of any voting rights or management authority over the Borrower(s), to the extent the same constitutes a transfer of control or assignment of any of the FCC Licenses.

(ii) Under the Broadcast Regulations, certain contracts and agreements relating to ownership or control of the radio broadcast license must be filed with the FCC within thirty (30) days after their execution. Pursuant to such regulations, copies of the Restated Loan Agreement and certain of the Security Documents must be filed with the FCC after the closing of the Restated Loan Agreement. We will undertake to make such filing with the FCC upon your providing us with photocopies of the signed Restated Loan Agreement, Note(s) and Security Documents, and we will advise you in writing when these filings have been completed.

This opinion is furnished to you by us solely for your benefit and use in connection with the consummation of the transactions contemplated by the Restated Loan Agreement. This opinion is not to be circulated, quoted or otherwise referred to for any other purpose without the prior written consent of this firm.

Very truly yours,

~~Haley Bader & Potts~~

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LARRY D. SUMMERVILLE
DISPATCH ANALYST

ANDREW G. HALRY
(1904-1966)

June 10, 1991

VIA FACSIMILE & FEDERAL EXPRESS

Fidelity Bank, National Association
Broad and Walnut Streets
Philadelphia, PA 19109

Re: M.M. Group refinancing

Ladies and Gentlemen:

This supplemental opinion is provided to you in connection with the June 6, 1991, closing on the refinancing of the Loan Agreement between M.M. Group, Inc. ("MM"), Riggs-Hutchinson & Associates, Inc. ("RH") and Fidelity Bank, National Association.

Haley, Bader & Potts has served as special communications counsel to M.M. Group, Inc., an Ohio corporation ("MM"), Riggs-Hutchinson & Associates, Inc., an Ohio corporation ("RH") (collectively the "Borrower"), and Mark S. Litton and Robert G. Casagrande in connection with their interests in RH, and as applicable, concerning communications matters relative to the Federal Communications Commission ("FCC").

In rendering this opinion we have assumed the genuineness of signatures on documents and the conformity to the originals of all copies examined by or submitted to us of photocopies or conformed copies. As to various questions of fact in connection with this opinion, we have relied upon

Fidelity Bank, National Association
June 10, 1991
Page 2

responsible representatives of the Borrower and of the FCC. We have examined such records, certificates and other documents and have considered such questions of law as relate to the Borrower as we have deemed necessary or appropriate for the purposes of this opinion.

Except as otherwise specifically stated herein, this opinion is limited to matters arising under the Communications Act of 1934, as amended (the "Communications Act"), and the rules, regulations, orders, policies and procedures of the FCC (the "Broadcast Regulations"), all as applicable to the Borrower and the Stations (as defined in the Restated Loan Agreement between MM, RH and Fidelity Bank, National Association, dated June 6, 1991). The opinions expressed in this letter are limited to the matters set forth in this letter, and no other opinions should be inferred beyond the matters expressly stated. As used herein, the term "diligent inquiry" is limited and means conversations among and between employees and principals of this firm and principals, employees or agents of the Borrower and the FCC, as well as a general review of (a) files maintained by this firm in connection with its representation of the Borrower and its principals, and (b) the public files, records and Public Notices of the FCC relating to the Borrower and the Stations. Except as otherwise specifically indicated herein, no attempt has been made to confirm, validate, investigate or further explore representations made by the FCC's employees or agents, or the accuracy of information contained in the FCC's files.

Based upon the foregoing limitations, and except as indicated below, we are of the opinion that as of the date set forth above:

1. To the best of our knowledge upon diligent inquiry: (a) there are no judgments, decrees or orders, other than those that affect the broadcast industry generally, issued by the FCC against any entity included in Borrower or against any of the principals of such entity that could reasonably be expected to result in the termination, revocation, or material impairment of the FCC Licenses; (b) except as described in Exhibit B, there is no FCC investigation, complaint, action or proceeding pending or threatened against one or more of the Borrowers or with respect to any of the FCC Licenses including without limitation, any Notice of Violation, Notice of Apparent Liability, or Order to Show Cause, other than investigations, actions, or proceedings that affect the broadcast industry generally, which could reasonably be expected to

Fidelity Bank, National Association
June 10, 1991
Page 3

result in a termination, revocation, or material impairment
of any of the FCC Licenses.

This opinion is furnished to you by us solely for your
benefit and use in connection with the consummation of the
transactions contemplated by the Restated Loan Agreement.
This opinion is not to be circulated, quoted or otherwise
referred to for any other purpose without the prior written
consent of this firm.

Very truly yours,

Halley Bader & Potts

By 

Partner

cc: Mr. Mark S. Litton

Attachment A

FCC LICENSES

M.M. Group, Inc.

WCSJ(AM), Morris, Illinois
WCFL(FM), Morris, Illinois
R.P.Base/Mobile System File No. BRRE-790726NA

WQTL(FM), Ottawa, Ohio
P.P. Mobile KA-2230

WNRJ(AM), Circleville, Ohio
Remote Base KP7760
WTLT(FM)
STL WLE-237
STL WLE-237

Attachment B

1. On June 22, 1990, the FCC issued to MM a Notice of Apparent Liability for Monetary Forfeiture ("NOL"), in the amount of \$3800, for engineering, posting and public file rule violations discovered in an inspection of the facilities of WCFL(FM), Morris, Illinois. The NOL subsequently was referred to the Justice Department for collection.

2. A investigation by the FCC's Detroit Field Office is pending with respect to WTLT(FM), Circleville, Ohio. The Field Office personnel will provide no information as to the nature or source of the investigation.

EXHIBIT 4

John H. Battison P.E.

CONSULTING COMMUNICATIONS ENGINEER

2684 STATE ROUTE 60

LOUDONVILLE, OHIO 44842

(419) 994-3849

MOBILE (614) 395-6968

Mr. Mark Litton,
Executive Vice President,
M M Group,
Suite 209,
6555 Busch Boulevard,
Columbus, OHIO 43229

3.13.92

Dear Mark:

Here is my report on my two visits to WNRJ, Circleville, Ohio, the second was on Tuesday March 10, 1992.

On my first visit we were not able to check monitor points because the WNRJ field intensity monitor was not working. However, I was able to confirm that the antenna operating parameters were in accordance with the terms of the license. At that time none of your technical staff were present.

There was a report that number four monitor point had been "out", and that the antenna monitor readings for tower four were "out" also. On my arrival the antenna monitor readings were all within limits. We could not check the monitor point because of a faulty station field strength meter. However, inspection of the antenna tuning unit (ATU) houses showed that number four had the remains of several rodents that had apparently been electrocuted in the ATU. Their presence across a tuning coil could easily have been the cause of the temporary incorrect antenna monitor reading and the monitor point's error.

The remainder of your operation appeared to be complying within FCC requirements.

On my visit on March 10th. 1992 I brought my field strength meter. Your engineer Pete was present, and we verified the correctness of the antenna monitor readings, and raised the common point current to its licensed value of 4.6 amperes. No other adjustment was necessary.

We then measured the monitor points in the heavy rain. The results appear below.

Monitor Point Number	FCC Value MV/M	Measured MV/M	Time
#1	8.5	5.1	11.00
#2	2.6	2.8*	11.25
#3	2.9	2.3	11.33
#4	3.0	2.9	11.40
#5	5.2	4.1	12.00

*heavy rain probably cause of slight overage.

The manner in which the transmitter log was kept was, to say the least, surprising. I examined the log and then the antenna monitor readings, because the log entries were utterly and completely erroneous! I asked Pete if the antenna monitor readings were correct. After a bit of hedging he said they were "all about right"!

I then asked him to read the three towers and compare them with the license parameters. His readings agreed with mine, and were all within limits. We looked back through the old logs to last summer. Apart from one or two instances where the correct figures had been put down, the readings were all very close to those on the log that morning---and all completely wrong.

It looks to me as though someone put down a wrong set of readings sometime last year, and ever since these have been copied without the monitor ever being read. Pete did not know what they should be, hence his hedging. I told him to place the correct readings adjacent to the antenna monitor for quick reference.

To give Pete his due he had never been told about the antenna monitor readings, and apparently never made them normally. Someone called Embry "took care of that" and the monitor-point readings. I had a long talk with Pete, and told him to read them regularly and to call me if there should be discrepancies.

Here are some important points for you to observe:

- 1) The chief operator is required to check the logs weekly and sign them as being OK.
- 2) A regular inspection is required as necessary to ensure that all equipment is working properly, this should be entered on a separate maintenance log by Pete.
- 3) An alternative chief operator must be designated to do the chief's job when required. It should be in writing and located beside the chief operator notice.

I could not determine from the material available at the station if WNRJ has an approved sampling system. I called the Commission their records do not show that you have one. When it does, your logging and monitor point work will be far easier. I will prepare an informal application for you to file.


I could not determine from the material available at the station if WNRJ has an approved sampling system. I called the Commission their records do not show that you have one. When ~~it does has~~, *you do* your logging and monitor point work will be far easier. I will prepare an informal application for you to file.

When you do have an approved monitor system quarterly monitor point readings will not be required, nor will three hourly antenna monitor readings. But I strongly recommend that you continue to take three hourly readings for obvious reasons. Monitor point readings will only be required if you suspect a problem, or want to check the array.

I've included Zeroxes of several FCC Rules pertaining to logs and monitors. By the way, you should have a current set of Rules at each station.

Good luck,

Sincerely yours,


John H. Battison PE
Consulting Radio
Enc: Copies of some FCC Rules
Engineer.

FEDERAL COMMUNICATIONS COMMISSION RULES - PART 73

(f) If conditions beyond the control of the licensee prevent the restoration of the meter to service within the above allowed period, information requested in accordance with §73.3549 of this chapter may be filed with the Engineer in Charge of the radio district in which the station is located for such additional time as may be required to complete repairs of the defective instrument. (Revised 81-266, 8/7/81)

EDITOR'S NOTE: Section 73.61 has been so completely revised by Amendment No. 85-590 that the previous wording is not shown.

73.61 AM DIRECTIONAL ANTENNA FIELD STRENGTH MEASUREMENTS.

(a) Each AM station using a directional antenna must make field strength measurements at the monitoring point locations specified in the instrument of authorization, as often as necessary to ensure that the field at those points does not exceed the values specified in the station authorization. Additionally, stations not having an approved sampling system must make the measurements once each calendar quarter at intervals not exceeding 120 days. The provision of this paragraph supersedes any schedule specified on a station license issued prior to January 1, 1986. The results of the measurements are to be entered into the station log pursuant to the provisions of §73.1820.

(b) Partial proof of performance measurements using the procedures described in §73.154 must be made whenever the licensee has reason to believe that the radiated field may be exceeding the limits for which the station was most recently authorized to operate.

(c) A station may be directed to make a partial proof of performance by the FCC whenever there is an indication that the antenna is not operating as authorized.

73.62 DIRECTIONAL ANTENNA SYSTEM TOLERANCES.

(a) Each AM station operating a directional antenna must maintain the indicated relative amplitudes of the antenna base currents and antenna monitor currents within 5% of the values specified on the instrument of authorization, unless other tolerances are specified therein. Directional antenna relative phase currents must be maintained to within $\pm 3^\circ$ of the values specified on the instrument of authorization, unless other tolerances are specified therein. (Edit. Amdt. 7/31/85)

W N R E
OK

September 25, 1984
84-294

73.1745

FEDERAL COMMUNICATIONS COMMISSION RULES - PART 73

73.1745 UNAUTHORIZED OPERATION.

(a) No broadcast station shall operate at times, or with modes or power, other than those specified and made a part of the license, unless otherwise provided in this part. (Added 78-681, 10/16/78)

FEDERAL COMMUNICATIONS COMMISSION RULES - PART 73

73.1820 STATION LOG.

(a) Entries must be made in the station log either manually by a properly licensed operator in actual change of the transmitting apparatus, or by automatic devices meeting the requirements of paragraph (b) of this section. Indications of operating parameters that are required to be logged must be logged prior to any adjustment of the equipment. Where adjustments are made to restore parameters to their proper operating values, the corrected indications must be logged and accompanied, if any parameter deviation was beyond a prescribed tolerance, by a notation describing the nature of the corrective action. Indications of all parameters whose values are affected by the modulation of the carrier must be read without modulation. The actual time of observation must be included in each log entry. The following information must be entered:
(Added 83-338, 9/19/83)

(1) ALL STATIONS: (Added 83-338, 9/19/83)

(i) Entries required by §17.49 of this chapter concerning any observed or otherwise known extinguishment or improper functioning of a tower light: (Added 83-338, 9/19/83)

(A) The nature of such extinguishment or improper functioning. (Added 83-338, 9/19/83)

(B) The date and time the extinguishment or improper operation was observed or otherwise noted. (Added 83-338, 9/19/83)

(C) The date, time and nature of adjustments, repairs or replacements made. (Added 83-338, 9/19/83)

(ii) Any entries not specifically required in this section, but required by the instrument of authorization or elsewhere in this part. (Added 83-228, 9/19/83)

(iii) An entry of each test of the Emergency Broadcast System procedures pursuant to the requirements of Subpart G of this part and the appropriate EBS checklist. In the case of TV and non-commercial educational FM stations, such entries may be made in the program log. Alternatively, All stations may keep EBS test data in a special EBS log which may shall be maintained at any convenient location; however, such log shall should be considered a part of the station log.

73.1820(a)(2)

September 19, 1983
83-338 (Correction)*

FEDERAL COMMUNICATIONS COMMISSION RULES - PART 73

(2) DIRECTIONAL AM STATIONS WITHOUT AN FCC-APPROVED
ANTENNA SAMPLING SYSTEM (See §73.68):

EXHIBIT 5